Supreme Court, U. S.
FILED
FEB 13 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-987

R. W. JONES, SR., *et al.*,
Petitioners,

vs.

CHARLES T. WOLF, *et al.*,
Respondents.

BRIEF FOR AMICI CURIAE, THE PRESBYTERIAN CHURCH IN THE UNITED STATES, LUTHERAN CHURCH IN AMERICA, ORTHODOX CHURCH IN AMERICA, HUNGARIAN REFORMED CHURCH IN AMERICA, AND CUMBERLAND PRESBYTERIAN CHURCH IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

JOSEPH W. GRIER, JR.
GASTON H. GAGE
1100 Cameron-Brown Building
Charlotte, North Carolina 28204
(704) 372-6730

Attorneys for Amici Curiae

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

	Page
INTEREST OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES AND OTHER AMICI CURIAE	1
SUMMARY OF CONTROLLING PROVISIONS OF BOOK OF CHURCH ORDER, PCUS	5
ARGUMENT	
I. FIRST AMENDMENT RIGHTS HAVE BEEN LOST IN CONFUSION CREATED BY THE GEORGIA CASES	7
II. A "NEUTRAL PRINCIPLES" READING OF THE STIPULATED DOCUMENTS DISCLOSES THAT RESPONDENTS ARE NOT THE CHURCH NAMED IN THE DEEDS OF CONVEYANCE AND THAT THE PETITIONERS AND THOSE THEY REPRESENT ARE THE CHURCH AND ARE ENTITLED TO THE CONTROL OF THE CHURCH PROPERTY	10
III. GEORGIA IS ALONE IN INTERPRETING THE PCUS DOCUMENTS IN FAVOR OF DISSIDENT MAJORITIES OF LOCAL CONGREGATIONS	16
CONCLUSION	19

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-987

R. W. JONES, SR., *et al.*,
Petitioners,

vs.

CHARLES T. WOLF, *et al.*,
Respondents.

BRIEF FOR AMICI CURIAE, THE PRESBYTERIAN CHURCH IN THE UNITED STATES, LUTHERAN CHURCH IN AMERICA, ORTHODOX CHURCH IN AMERICA, HUNGARIAN REFORMED CHURCH IN AMERICA, AND CUMBERLAND PRESBYTERIAN CHURCH IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

INTEREST OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES AND OTHER AMICI CURIAE

The Presbyterian Church in the United States (hereafter PCUS) is the religious denomination of which the Vineville Presbyterian Church (hereafter VPC) located in Macon, Georgia, was a local congregation, from the time of its organization by the Augusta-Macon Presbytery in 1904. The members now loyal to PCUS stand in the tradition and identify with all those members who have gone before and have been loyal to PCUS. On May 27, 1973, a majority of the then members of the local

congregation and its then pastor undertook to withdraw the local Church and control of its property from the Presbytery which had created the local Church and from the denomination of which it had been a part for sixty-nine years.

PCUS is a Protestant, Christian Church in the Calvin-Knox tradition. Its constitution consists of "its doctrinal symbols, embraced in the Confession of Faith and the Larger and Shorter Catechisms, together with the Book of Church Order (hereafter sometimes BCO), which comprises the form of government, the rules of discipline and the "Directory for Worship," [1] each of which has evolved from the English and Scottish documents adopted after the Protestant Reformation.

PCUS is one of approximately thirteen or more Presbyterian denominations in the United States having a common heritage and constitutions basically similar but not identical.

PCUS, according to 1979 statistics, is comprised of a General Assembly which meets annually, seven Synods, fifty-nine Presbyteries, and four thousand seven local congregations, located in sixteen states [2] and the District of Columbia. Two hundred ninety-one local churches are located in the State of Georgia. There were five thousand two hundred fifty-four ordained ministers and eight hundred sixty-two thousand four hundred sixteen communicants.

The position of PCUS and those members loyal to it is that dissident members of a local congregation may as individuals withdraw at will, but that a majority of the local members may not withdraw the local church and

[1] Form of Government, *BCO*—Preface II, App. 29.

[2] Alabama, Arkansas, Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia.

control of its property from the PCUS denomination except by the consent of the Presbytery which established the church. The power of Presbytery with respect to division, dismissal, and dissolution of churches is specific in BCO 16-7(6) (8) and (9) [App. 46]. The jurisdiction of higher courts to review lower courts is a historic characteristic of Presbyterianism.

It is important that the ultimate dispute in this case is over the use and control of Church property; that PCUS is a representative form of government, and by express provisions of BCO, the use and control of Church property is not in the members of the congregation but in the Church Session established by BCO as the governing body of the congregation; [3] that the Presbytery has the power "to assume, original jurisdiction in cases in which a church session cannot exercise its authority" (*BCO* 16-7(2), App. 55); and that in this case, the Presbytery had set aside the Church Session and was undertaking to control the use of the Church property as it had the right to do under the specific language of the *Book of Church Order*, to which all members had subscribed.

In the fifteen years [4] since the first Hull Church case which began early in 1966, there have been two trials, four hearings and decisions by the Supreme Court of Georgia, two hearings and multiple opinions by the United

[3] "The Church Session is charged with maintaining the spiritual government of the Church. For this purpose it has power: . . . . (10) to exercise in accordance with the Directory of Worship, authority over the time and place of the preaching of the Word, and of the administration of the Lord's Supper, over all other religious services, over the music in the services, and over the uses to which the church building and associated properties may be put. *BCO* 15-6 (10), App. 52.

[4] *Presbyterian Church* v. *Eastern Heights Presbyterian Church*, 224 Ga. 61, 159 S.E.2d 690 (1968), *rev'd.*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969).

States Supreme Court. After all of these judicial attempts to apply neutral principles of law, said to be objective, well-established, and familiar to lawyers and judges, the most recent attempt (after five previous attempts) by the Supreme Court of Georgia was accepted by only two of the seven present members of the Supreme Court of Georgia.

A further review of the Georgia law with respect to the rights of a hierarchical church in the control of the use of the property of a local congregation, a majority of whose then members undertake to withdraw, is of the highest importance to PCUS and the members of the denomination. The uncertainty of the civil law of Georgia with respect to the control of the property of religious institutions is a present danger to the two hundred ninety-one local congregations of PCUS located in the State of Georgia and a threat to all of the four thousand seven local congregations of the denomination, to other Presbyterian denominations whose form of government is basically similar, and in fact to all religious institutions.

While PCUS is not a party to the litigation, it has under the circumstances a direct interest in the property of VPC. This brief will set forth the basis of that interest as PCUS believes is established by an objective neutral reading of the deeds, statutes and constitutional documents of PCUS.

The other Amici Curiae, Lutheran Church in America, Orthodox Church in America, the Hungarian Reformed Church in America, and Cumberland Presbyterian Church are also hierarchical churches similarly affected and concerned by the decision below.

This Amicus Brief is being filed with the consent of all the parties (letters on file with the Clerk of the Court).

SUMMARY OF CONTROLLING PROVISIONS OF BOOK OF CHURCH ORDER, PCUS

We believe it useful to state at the outset why the *Order* of PCUS does not allow members of a local congregation to separate a PCUS Church from PCUS.

(1) Presbytery organized VPC. VPC did not join PCUS. "Forty-eight citizens of Bibb County, Georgia, submitted a petition . . . to be organized into a Presbyterian Church." (App. 319) VPC was created by PCUS.

(2) In the proceeding in which VPC was organized, the members promised to "walk together as an organized church on the principles of faith and *Order* of the Presbyterian Church in the United States." (*BCO* 4-1(2) App. 24)

(3) Ministers, elders and deacons upon ordination are required to approve the government of PCUS. (*BCO* 27-6(4) App. 84; *BCO* 29-3(4) (App. 89)

(4) The *Order* of PCUS is a representative form of government. "It is expedient and agreeable to scripture and to the practice of early Christians that the Church be governed by representative assemblies, composed exclusively of Presbyters or elders." (*BCO* 13-1 App. 38)

(5) The *Order* of PCUS gives the Session the power of government. "Its government (the particular church) and jurisdiction, being a joint power, is lodged in the church session which consists of the pastor(s) and ruling elders."

(6) The session to which the government of a particular church is committed has authority over the time and place for preaching, over all religious services, and over the uses to which the church building and assorted properties may be put. (*BCO* 15-6 App. 51) The function of the congregation is limited to calling ministers (subject to approval of Presbytery), election of elders and deacons,

and permissibly, trustees and corporate officers, and instructing trustees and officers with respect to the purchase, sale and mortgaging of property of the Church, with the limitation that the duties of trustees and officers "must not infringe upon the powers and duties of the session or of the Board of Deacons." (*BCO* 6-1 & 2 App. 35)

(7) The *Order* of PCUS establishes a hierarchal form of government. "Although each court exercises exclusive original jurisdiction over all matters specially belonging to it, the lower courts are subject to the review and control of the higher courts, in regular gradation." (*BCO* 14-5 App. 49)

(8) The Presbytery, which exercises jurisdiction over churches within a prescribed district (BCO 14-5 App. 49) has power to review and redress whatever particular churches may have done contrary to *Order* and take effectual care that they observe the constitution of the Church, to assume original jurisdiction (that is, set aside the session and govern the particular church directly), to unite or divide churches, to receive and dismiss churches, to dissolve churches, and control the location of new churches and of churches desiring to move to new locations (BCO 16-7 App. 55), and to take title to property of churches which are dissolved or cease to exist. (BCO 6-3 App. 27)

(9) Church members who renounce the communion of PCUS by joining some other church are erased from the rolls (BCO 111-2 App. 124), and officers lose all authority. (BCO 111-3 App. 125)

We believe that these and other provisions of *BCO* show that a PCUS church can be separated from Presbytery and PCUS only by action of Presbytery. So far as we know, upon investigation, this is what every civil court which has considered the question under PCUS *Order* has held, except those in Georgia.

ARGUMENT

I

FIRST AMENDMENT RIGHTS HAVE BEEN LOST IN CONFUSION CREATED BY THE GEORGIA CASES.

The two-judge opinion below applies a "presumptive rule of majority representation" against Petitioners.[5] This rule is materially less favorable to PCUS than the non-presumptive rule apparently still applied by a majority of the court to hierarchical denominations in Georgia.[6] The law of Georgia is further confused by the Georgia Court's determination in the first *Jones* v. *Wolf* appeal that, "This case is distinguishable from *Carnes*, in which this Court found an *implied trust* in favor of the general church, the United Methodist Church, because its book of discipline provided that 'title to all real property now owned or hereafter acquired by an unincorporated local church, . . . shall be held by and/or conveyed to its duly elected trustees . . . and their successors in office, . . . in trust, nevertheless, for the use and benefit of such local church and The United Methodist Church.'" [Emphasis added.] *Jones* v. *Wolf*, 241 Ga. 208, 243 S.E.2d 860 (1978) (Pet. at 15a), *vacated and remanded*, ——

---

[5] "Georgia has adopted for use in church local schism cases a 'presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be determined by some other means.' [Authority omitted.] That presumption is overcome under Georgia law by an application of what has come to be known as 'neutral principles' of law—that is, 'state statutes, corporate charters, relevant deeds, and the organizational constitutions of the denomination.'" *Jones* v. *Wolf*, 260 S.E.2d 84 (Ga. 1979) (Pet. at 50a).

[6] "*Carnes* v. *Smith*, 236 Ga. 30, 222 S.E.2d 322 (1976), identified two types of church government—congregational and hierarchical. If the church government is congregational, then a majority of its members control its decisions and local church property. If hierarchical, then we use 'neutral principles of law' to determine whether

U.S. ——, 99 S.Ct. 3020 (1979). Notwithstanding that the implied trust theory was supposedly abandoned in *Presbyterian Church* v. *Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E.2d 658 (1969), we find the Supreme Court of Georgia still asserting in 1978 that it has life for *Carnes* but not *Jones*. As it has survived in *Crumbley*, the implied trust theory apparently has shed the forbidden departure-from-doctrine element which ostensibly caused the implied trust theory to be abandoned to the injury of PCUS in *Eastern Heights Presbyterian Church, supra.*

The departure-from-doctrine rule in Georgia formerly required "complete abandonment." *Presbyterian Church* v. *Eastern Heights Presbyterian Church*, 224 Ga. 61, 159 S.E.2d 690 (1968), *rev'd.*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969). The Court in *Eastern Heights Presbyterian Church I*, *supra*, held, that, "We do not believe that 'complete' or like degree of abandonment or departure is necessary for relief. To the extent that *Mack* v. *Kime*, 129 Ga. 1, 58 S.E. 184, *supra*, requires such standard, it is expressly overruled." 159 S.E.2d at 696. The rule then adopted required merely "important" abandonment. These incongruous rulings of the Georgia Court have worked to the prejudice of PCUS under the First Amendment in Georgia.

To add to the confusion, Georgia Courts have spoken of the implied trust theory in a way not only inconsistent among the various Georgia cases but also inconsistent with the understanding of the meaning of implied trust

---

the local church or parent church has the right to control local property.

". . . .

"In recent years this court has looked consistently to the requirements of the church discipline in hierarchical denominations to avoid offending the prohibitions of the First Amendment. For example, in *Carnes* v. *Smith*, this Court rested the general church's right to the property on the church discipline." *Crumbley* v. *Solomon*, 243 Ga. 343, 254 S.E.2d 330, 332-3 (1979).

well-established among lawyers and judges. The elementary distinction in Bogert, *Law of Trusts*, Ch. 2 § 8 (Hornbook 4th Ed.), suffices to illustrate this long understood meaning of implied trust: "But there are certain trusts which do not have back of them any written instrument or oral expression or other act explicitly showing a trust intent. These latter trusts are usually called implied, and are divided into two classes, namely, resulting and constructive. The former occur where the courts presume or infer from certain acts that the parties intended a trust to exist, *although they expressed no such intent directly by talking or writing* . . . The latter, namely, *constructive trusts*, are imposed by chancery on the owners of property as a means of accomplishing justice and preventing unjust enrichment." [Emphasis added.] Situations where title is conveyed to trustees, as in this case, are not situations for impressing an implied trust, either resulting or constructive, according to the well-established rules. *See* Restatement, Trusts, Ch. 12, General Principles (1935); Restatement, Restitution, § 160 (1937) ("an express trust and a constructive trust are not divisions of the same fundamental concept.") The confusion in the law has worked to the prejudice of PCUS' rights under the First Amendment.

As will be urged below, a fair reading of the stipulated documents in this case reveals as much interest of PCUS in controlling the property of VPC as in any of the cases which have found a controlling interest in favor of other denominations.

II

A "NEUTRAL PRINCIPLES" READING OF THE STIPULATED DOCUMENTS DISCLOSES THAT RESPONDENTS ARE NOT THE CHURCH NAMED IN THE DEEDS OF CONVEYANCE AND THAT THE PETITIONERS AND THOSE THEY REPRESENT ARE THE CHURCH AND ARE ENTITLED TO THE CONTROL OF THE CHURCH PROPERTY.

"The property at issue and upon which the church is located was acquired in three transactions, and is evidenced by conveyances to the 'Trustees of [or 'for'] Vineville Presbyterian Church and their successors in office,' App. 251, 253, or simply to the 'Vineville Presbyterian Church.' *Id.* at 249." *Jones* v. *Wolf*, 99 S.Ct. 3020, 3022. As noted in Petitioners' Brief,[7] "In a majority of these instruments, specific authorization was given to the trustees to deal with the property, but to do so 'by complying with the rules and regulations of the Church only.' JA 254, 257, 262, 265, 269." The "Church" as used in the trust expressed in the deeds is defined in Section 3-3 of the BCO: "Its government and jurisdiction, being a joint power, is lodged in the Church Session, which consists of the Pastor(s) and Ruling Elders." App. 32. The "rules and regulations" which the trustees are therefore bound to obey are the rules and regulations found in the BCO. The two-judge opinion below neither indicates what these regulations are nor whether the majority vote complied with them.

The government of the church whose rules and regulations the trustees of the deeds are thus expressly bound to obey is Session, which is a PCUS court and subject to the jurisdiction of PCUS higher courts. Under normal circumstances and in the absence of internal controversy and dispute, the Session controls the use of church property (BCO § 15-6[10] App. 52) and Presbytery supervision is by annual review of the Session minutes (BOC § 16-7[3] App. 55). Presbytery has no direct control of the use of church property. If Session is unable to exercise control, Presbytery may set the Session aside and assume direct jurisdiction (BCO § 16-7[2] App. 55) or dissolve the church and require the transfer of legal title to it (BCO § 6-3 App. 36). The interest which Presbytery has is analogous to a shifting use, unexecuted and dormant until the conditions (walk together as an organized church on the principles of faith and order of the Presbyterian Church in the United States—BCO § 4-1[2] App. 33) are broken and thereafter vesting in Presbytery the right to assume control and to take legal title to the property. In its discretion the Presbytery may dismiss the church and disestablish any relationship with PCUS. This flexible arrangement is the form of church government PCUS has chosen and prefers to the more rigid form of arrangement practiced by some other denominations.

[7] In Case No. 78-91, October Term 1978.

While it is clear that the "particular church" (as defined in the BCO, § 3-1, App. 32) was the primary beneficiary, there was a secondary use or shifting use provided in the BCO in favor of PCUS. The Trustees, whether expressly denominated Trustees under BCO Section 6-1 (App. 35) or Trustees *de jure* under BCO Section 6-2 (App. 35), were impressed with the duty to recognize the potential of the use found in BCO § 6-3 as follows:

> "If a church is dissolved by the Presbytery, or otherwise ceases to exist, and no disposition has been made of its property, those who hold the title to the property shall deliver, convey and transfer to the Presbytery of which the church was a member, or to the authorized agents of the Presbytery, all property of the church . . . ." App. 36.

The Decision below divests this secondary use without any recognition of its existence.

The church property rights of Petitioners and PCUS are to an important extent found in the deed language, "rules and regulations of the Church." The above quoted BCO § 6-3 is one of such rules.

The neutral principles method was approved by this Court and defined as follows:

> "The method relies exclusively on objective, *well-established concepts of trust and property law* familiar to lawyers and judges . . . the neutral principles analysis shares the peculiar genius of private-law systems in general—flexibility in ordering private rights and obligations *to reflect the intentions* of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property . . . in the event of a schism or doctrinal controversy." *Jones* v. *Wolf*, 99 S.Ct. 3020, 3025-6 [Emphasis added.]

The neutral principles method was then further defined in this manner:

> "In addition, there may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." *Id.* at p. 3026.

The relationships into which the property of the Vineville Church was conveyed and held are defined in part in the deeds of conveyance and in part in the provisions found in the PCUS Constitution in the Book of Order.

The forty-five VPC members acquiring the property beginning more than fifty years ago knew that PCUS was a hierarchical and not a congregational church. By the deeds and the provisions of BCO, they manifested an

intention that the Church property be held subject to the form of government of PCUS.[8]

The Church property was not committed by those who were members when Vineville Church was founded and when the various properties were acquired to the unsupervised and arbitrary whim of the departing VPC members.

The record is devoid of evidence of any contribution made by Respondents to the property of the Church. The frequent references by the Supreme Court of Georgia that the general church has not contributed funds to the local congregation, implying some equity in the present members of the congregation, overlooks the fact the property was acquired many years ago by members now departed, all of whom so far as the records show were completely loyal to PCUS. Thus the equities based on financial contributions in acquiring the property lie with those loyal to PCUS. In addition, it is PCUS that has trained the ministers who have served the VPC and have provided it with church literature and other highly important supports.

The parties have stipulated that Presbytery organized the Vineyard Presbyterian Church in 1904 upon the Petition submitted "to the Macon Presbytery . . . seeking to

---

[8] Chapter 6, Section 6-1. ". . . *The powers and duties of such trustees must not infringe upon the powers or duties of the Session or of the Board of Deacons. Such trustees shall be elected in regulatly constituted meetings.*" [Emphasis added.] (App. 35)

Section 6-3. "*If a church is dissolved by the Presbytery, or otherwise ceases to exist, and no disposition has been made of its property, those who hold the title to the property shall deliver, convey and transfer to the Presbytery of which the church was a member, or to the authorized agents of the Presbytery, all property of the church*; . . . ." *See* also BCO Section 15-6(10) quoted in n.3, *supra*.

Sec. 15-6 (6, 8, 9)

be organized into a Presbyterian Church." (App. p. 316) "A church can be organized only by authority of Presbytery." (App. 33) Being organized as a church involves entering into the following covenant:

> "Do you, in reliance on God for strength, solemnly promise and covenant that you will walk together as an *organized church*, on the principles of the faith and *order of the Presbyterian Church in the United States*, and that you will be zealous and faithful in maintaining the purity and peace of the whole church?" [Emphasis added.] (App. 33)

Notwithstanding the Vineville Presbyterian Church having submitted to the government of PCUS, and notwithstanding the clear provisions of the BCO, Petitioners have been subjected (as stipulated by Respondents) "to the complete exclusion of utilization of any of said property . . . as a local unit of the Presbyterian Church in the United States . . ." (App. 318) The Court below, while decrying reference to polity, has defied pre-existing covenant and constitution in giving absolute deference to a vote of Respondents for the purpose of identifying both the beneficiaries and purposes for which the property is to be used. The civil court did this even though the identity of the congregation must be determined only by reference to church polity. This result can be defended only by the assertion, specious upon its face, that Respondents who rejected, denounced and abandoned PCUS are its "true" congregation as defined in its Constitution.

Having renounced covenant and church, Respondents are rewarded by Georgia's grant to them of the church property to the exclusion of those beneficiaries remaining loyal.

It is a long and dearly held neutral principle of Due Process that the State may not deprive an unfavored group of its property for the purpose of benefiting a

group more favored by the State.[9] For the Court below to divest the use of church property ex post facto in favor of a group preferred by the State is a clear invasion of constitutional rights.

By whatever name called, Petitioners and Presbytery have a substantial property interest provided in the Constitution of PCUS, by which VPC agreed to be governed, giving Presbytery the right to set aside the Session and assume direct jurisdiction and any property of the church which "is dissolved by the Presbytery, or otherwise ceases to exist . . . ." (App. 36) The clear, express duty of those holding title is to make the conveyance.[10] (App. 36)

VPC has not been dissolved in order to invoke the dissolution clause of the PCUS Constitution (App. 36), nor need VPC be dissolved. By any rational, neutral reading of the stipulated documents, the property is in the grip of a group admitting itself not to exist in PCUS within the meaning of the provision, "[a] church can be organized only by the authority of Presbytery." (App. 33) Under no

---

[9] *Bayard* v. *Singleton*, 1 N.C. 5 (1787). ". . . For that if the Legislature could take away this right, and require him to stand condemned in his property without a trial, it might with as much authority require his life to be taken away without a trial by jury, and that he should stand condemned to die, without the formality of any trial at all: that if the members of the General Assembly could do this, they might with equal authority not only render themselves to Legislators of the State for life, without any further election of the people, from thence transmit the dignity and authority of legislation down to their heirs male forever." *Id.* at p. 7.

[10] In *Wyche* v. *Alexander*, 15 N.C. App. 130, 189 S.E.2d 608 (1972), *cert. den.* 281 N.C. 764, 191 S.E.2d 361 (1972), the Court affirmed the finding of the Trial Court, "that title to Westminster's real estate was conveyed to the Trustees of Westminster for the purposes of a trust defined by the provisions of the Constitution of the United Presbyterian Church in the United States of America, wherein their offices and duties were created, as found in the Book of Order, and that, upon dissolution of Westminister, title to the church property passed to the parent organization in furtherance of the purposes of the trust." 15 N.C. App. at 134.

construction of the stipulated documents is a group not organized by Presbytery entitled to use the property. Upon a church organized by Presbytery ceasing to exist, the duty of the trustees is to convey its property to Presbytery or its delegate. Respondents admit having ceased to be a church organized by Presbytery, and thus are affected by the duty to convey. Should this Court reach this result, then there would be no need for further inquiry. The duty to convey the property is clear, and whether to Petitioners or Presbytery ought not to be a matter of defense available to Respondents. There is no controversy between Presbytery and its congregation, Petitioners, for resolution by any civil court.

PCUS governs itself by a constitution which incorporates both doctrine and form of government. Courts, in suggesting amendment of the form of government in order to secure property rights, are treating the form of government as if it is only a manual of procedure. PCUS views its form of government as a visible expression of what it believes about God and the church. To require PCUS to amend its form of government is to require PCUS to change its belief about the way in which the church serves God.

III

GEORGIA IS ALONE IN INTERPRETING THE PCUS DOCUMENTS IN FAVOR OF DISSIDENT MAJORITIES OF LOCAL CONGREGATIONS.

The Alabama Trial Court held that loyal members and the administrative commission of the PCUS Presbytery were entitled to the use and control of church property on facts legally indistinguishable from the case at bar. The Supreme Court of Alabama reversed on the narrow ground of waiver and estopple. *Trinity Presbyterian Church* v. *Tankersley*, 374 So.2d 861 (Ala. 1979), *Pet. for Cert. filed* (U.S. Dec. 11, 1979) (No. 79-908).

The Florida Supreme Court on remand affirmed its earlier holding in favor of the loyal minority faction, that, "Petitioners represent their church because of the structure and government of PCUS." *Mills* v. *Baldwin*, 362 So.2d 2, 7 (Fla. 1978), *vacated and remanded*, 99 S.Ct. 3105, *aff'd on remand*, No. 51,588 (Fla. S.Ct. 1979).[11]

On facts also legally indistinguishable from those in this case, the South Carolina Supreme Court dealt with an argument of the seceding majority that, "the Presbyterian Church in the United States is congregational and not connectional insofar as matters of property are involved." The Court held, "By joining the First Presbyterian Church of Rock Hill the members did not acquire such an interest in the property that they are entitled to take with them upon seceding."[12] *Adickes* v. *Adkins*, —— S.C. ——, 215 S.E.2d 442, 444-5 (1975).[13]

---

[11] "In short, a careful reading of the cases makes clear that the issue in a case such as this is not who owns the property. The Madison Presbyterian Church of Madison, Florida, owns the property. The true issue is who represents the Madison Presbyterian Church? The authorities from *Watson* v. *Jones* found and clearly respond that petitioners represent that church because of the structure and government of PCUS." 374 So.2d at p. 7.

[12] "The membership of churches cannot be expected to remain constant. Old members die or leave the church and new members are constantly being added to the rolls. Persons who purchased and contributed to the Mission property and caused it to be transferred to the Red Bank Church as a Cumberland Presbyterian Church, as well as those who have contributed to a substantial sum going into improvements later made, had every reason to expect their donations to remain under the government of the Cumberland Presbyterian Church and be used for the advancement of its faith and doctrine." *Fairmount Presbyterian Church* v. *Presbytery of Holston*, 531 S.W.2d 301, 305 (Tenn. 19).

[13] "The property belonged to the First Presbyterian Church of Rock Hill before the members joined the church, and it belongs to the same after they have withdrawn. They simply are not now a part of that church." 215 S.E.2d at 445.

Texas follows the familiar rule:

> "When a division occurs in a local church affiliated with a hierarchical religious body, and a dispute arises between rival groups as to the ownership or control of the local church property, the fundamental question as to which faction is entitled to the property is answered by determining which of the factions is the representative and successor to the church as it existed prior to the division, and that is determined by which of the two factions adheres to or is sanctioned by the appropriate governing body of the organization. It is a simple question of identity. [Authority omitted.] In making such a determination, the civil court exercises no role in determining ecclesiastical questions. It merely settles a dispute as to identity, which in turn necessarily settles a dispute involving property rights." *Presbytery of the Covenant* v. *First Presbyterian Church of Paris, Inc.*, 552 S.W.2d 865, 871 (Tex. Civ. App. 1977, *rehearing den.* 1977)

Manifestly, everyone can understand the Texas rule; no one can understand the Georgia rule.

The Superior Court of Lincoln County, North Carolina, in an unreported decision on facts legally indistinguishable from the VPC litigation, Trial Judge Frank Snepp held on Motion for Summary Judgment that the attempt to withdraw from PCUS was ultra vires, illegal and void, and enjoined the withdrawing members from interfering with the use of the property by the members loyal to PCUS.[14]

---

[14] *Nixon et al* v. *Vanguard Presbytery et al*, Superior Court of Lincoln County, North Carolina, 73 CVS 622 (1974): "Pursuant to the Memorandum entered by the court upon the hearing of Plaintiff's motion for summary judgment on the 25th day of January, 1974, it is ORDERED, ADJUDGED and DECREED as follows: Plaintiffs are entitled to relief of defendants by summary judgment. Plaintiffs Paul K. Nixon, James M. Smith, Henry P. Graham, Myron M. Howard and Howard H. Terry are legal members of the Session of Unity Presbyterian Church of the Presbyterian Church in the United. The action of the majority of the congregation on June 3, 1973 in adopting the resolution of withdrawal of Unity Presbyterian Church from Presbyterian Church in the United States was ultra vires, illegal and void. Defendants and those acting in concert with them are hereby enjoined and restrained from interfering with or exercising dominion over the real and personal property of the Unity Presbyterian Church or interfering with the authority of the Church Session to carry out its authority and duties including those set out in § 15.6 in the Book of Church Order of the Presbyterian Church." There was no appeal.

CONCLUSION

PCUS respectfully submits that a review by this Court is necessary to correct grievous constitutional error committed in the Court below.

Respectfully submitted,

/s/ Joseph W. Grier, Jr.
JOSEPH W. GRIER, JR.

/s/ Gaston H. Gage
GASTON H. GAGE

1100 Cameron-Brown Building
Charlotte, North Carolina 28204
(704) 372-6730

Attorneys for Amici Curiae